

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD EARL,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 271829

Wayne Circuit Court

LC No. 06-001136-01

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged as a result of an altercation in a club. Defendant was ejected from the club after he began fighting with several persons. Two patrons, Franscile Ambrose and Darlene Jones, exited the club after the fight began, and heard gunshots as they were making their way to Jones's vehicle. Jones testified that she saw defendant waiving a gun in the air and shooting it. As Jones attempted to drive away from the club, a bullet came through the windshield and struck her in the head.

Defendant testified that he became involved in an altercation in the club after another man began speaking to his girlfriend. Defendant stated that security personnel ejected him from the club, and that shortly thereafter, another man began pointing a gun and shouting at defendant's girlfriend. Defendant maintained that he fired warning shots with a gun he obtained from a friend.

The jury convicted defendant of felonious assault, felon in possession of a firearm, and felony-firearm. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to concurrent terms of three to six years for felonious assault and three to seven and one-half years for felon in possession of a firearm, and to a consecutive two-year term for felony-firearm. Defendant received credit for 210 days served in jail. That credit was to be applied to the sentence defendant was serving on parole at the time he committed the instant offenses.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004). We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

"The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery, or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). A jury may infer the requisite intent from the conduct of the defendant and the surrounding circumstances. *People v Lawton*, 196 Mich App 341, 349; 482 NW2d 810 (1992).

Defendant argues that insufficient evidence was produced to support his convictions in that no evidence showed that he had the requisite intent to injure anyone.¹ We disagree.

Images from the club's security video showed that defendant extended his arm and fired his weapon down the street in the direction of Jones's vehicle, which was facing him. Jones testified that she saw defendant holding a gun, and that she wanted to move her vehicle away from him. The jury was entitled to infer from defendant's conduct and the surrounding circumstances that defendant intended to fire at Jones's vehicle, and that Jones reasonably apprehended an immediate battery, *id.*, *supra*; *Davis*, *supra*, and to reject defendant's assertion that he simply fired warning shots in the air. *Milstead*, *supra*. The prosecution produced sufficient evidence to support defendant's conviction of felonious assault. *Bulls*, *supra*.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional

¹ Defendant's assertion that because the evidence did not support his conviction of felonious assault, it also did not support his other convictions, is only partially correct. A conviction of felony-firearm cannot be had unless the defendant committed or attempted to commit the underlying felony, although it is not necessary that the defendant be convicted of the underlying felony. *People v Davis*, 196 Mich App 597, 601; 493 NW2d 467 (1992), overruled on other grounds in *People v Miles*, 454 Mich 90; 559 NW2d 299 (1997). As stated below, the evidence was sufficient to support defendant's conviction of felonious assault. Therefore, the evidence was sufficient to support defendant's conviction of felony-firearm. At trial, the prosecution introduced a certified copy of defendant's previous conviction of bank robbery. Defendant admitted that he possessed a firearm on the night in question. The evidence presented was sufficient to support defendant's conviction of felon in possession of a firearm. The verdict on that charge did not depend on the verdicts on the other charges.

norms. Counsel must have made errors so serious that he was not performing as the “counsel” guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Counsel’s deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel’s error, the result of the proceedings would have been different, *id.* at 600, and that the result that did occur was fundamentally unfair or unreliable. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). Counsel is presumed to have been afforded effective assistance, and the defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant argues that trial counsel rendered ineffective assistance by failing to file pretrial motions to quash the information and dismiss the case, and by failing to file an application for an interlocutory appeal in this Court. We disagree.

Defendant simply asserts that trial counsel should have filed pretrial motions in the trial court and an interlocutory application in this Court, but fails to specify the grounds on which those filings should have been based, and how counsel’s failure to make such filings resulted in prejudice. Defendant has not overcome the presumption that counsel rendered effective assistance. *Id.*

Affirmed.

/s/ Jane E. Beckering
/s/ David H. Sawyer
/s/ Karen M. Fort Hood